

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket Nos. 2015-004-00003C & 2015-004-00004C

Parcel Nos. 40142002081000 & 40142002080000

Rathbun Yacht Club & Your Boat Works, LLC,

Appellants,

v.

Appanoose County Board of Review,

Appellee.

Introduction

These appeals came on for hearing before the Property Assessment Appeal Board (PAAB) on January 19, 2016. Owner Brett Nuckolls represented Rathbun Yacht Club (Rathbun) and Your Boat Works, LLC (Boat Works). Attorney Brett Ryan represented the Appanoose County Board of Review.

Findings of Fact

Rathbun and Boat Works (hereinafter referred to collectively as the “Appellants”) are separate legal entities but have common ownership and operate adjoining commercial parcels as a single business. The appeals relied on the same evidence and testimony.

The Appellants protested to the Appanoose County Board of Review claiming their property was inequitably assessed, overassessed, and that it had suffered a change downward in value since the last assessment under Iowa Code sections 441.37(1)(a)(1)(a-b) and 441.37(1)(a)(2). Rathbun also asserted there was an error in the assessment under section 441.37(1)(a)(1)(d). The Board of Review denied the petitions.

The Appellants then appealed to PAAB on the single claim that the subject properties are overassessed.

Owner Brett Nuckolls testified at hearing. Nuckolls believes the properties should have a single assessed value because they were purchased as a unit. He also believes that Rathbun is erroneously listed as the owner of parcel number 4014200208100. He asserts Your Boat Works should be listed as the marina operator. Nuckolls asserts Rathbun donated the property to Your Boat Works after it was built in 1991, as required by the Army Corps of Engineers. (Appellants' Brief, p. 1). County Assessor Michael Barth testified the properties have always been assessed as separate parcels, and is unaware of any transfer of ownership having been documented. Because the properties have separate ownership, despite being purchased together, PAAB finds they require separate assessments. Given this, Nuckolls proposes a total assessment of \$100,000, but allocates the total between the two properties: \$15,000 for the Rathbun parcel and \$85,000 for the Your Boat Works parcel.

All of the improvements are situated on land leased from the Army Corp of Engineers. The following chart is a summary of the January 1, 2015, total assessment and improvements on each parcel as described on the property record cards.

Rathbun Yacht Club - 13516 Marina Place		
Parcel # 40142002081000 - Total 2015 Assessed Value = \$57,730		
Improvement Description	Year Built	Size (SF)
Clubhouse built 1991	1991	1440
Deck, two small porches	1991	1032/24
Shed	1991	192
Gazebo	2003	403
Your Boat Works, LLC - 21646 Marina Place		
Parcel # 40142002080000 Total 2015 Assessed Value = \$159,810		
Improvement Description	Year Built	Size (SF)
Manufactured Home	1998	1596
Metal Retail Store (Bldg 1)	1973	5000
Metal Warehouse (Bldg 2)	1973/1990	3512
Metal Warehouse (Bldg 3)	1985	3600
Hotel/Motel (Bldg 4)	1993	1638
Manufactured Home Park	1973	22 Spaces
10,000 Gallon Tank	1973	N/A
Covered Deck	1973	420
186 Boat Slips	Various	N/A

The property record card indicates Rathbun's clubhouse is of average quality, in normal condition with few or no updates, and is lacking floor coverings on over 1000 square feet.

The Your Boat Works property record card states that Building 1 has an unfinished basement and the main floor is mostly used for retail. Building 2 is a shop area with no heat, no plumbing, and minimal electricity. Building 3 is an unfinished warehouse with no heat, insulation, plumbing, or electricity. Building 4 is a two-story, hotel/motel with a full, walkout basement. It has thirteen rooms and the average room size is 312 square feet. There have been no recent updates, and it is in normal condition. The manufactured home park has twenty-two spaces; eleven have electric and water and the remainder only have electric.

Nuckolls explained the history of the subject properties. In 2009, Douglas and Sheila Clemens purchased the real property and business, on contract, for \$3,000,000 from Dr. Tom Brown. The Clemens did not fulfill the terms of the contract and were in default shortly after the 2009 purchase. Brown then marketed the property for sale. In order to retain the property, the Clemens sought equity partners. Brown agreed to sell the business and subject properties to the Clemens and Nuckolls for \$800,000 in January 2015 even though there were interested outside purchasers. The Clemens each have 25% ownership interest and Nuckolls has 50% ownership interest. Nuckolls notes \$373,500 of the purchase price was allocated to the real property, which included a third parcel not before PAAB.

In Nuckoll's opinion, the 2009 purchase was not an indication of market value because it was a contract sale. We agree. Additionally, the purchase occurred in 2009, and we do not find it relevant to a 2015 opinion of value.

However, Nuckolls asserts the 2015 sale was an arm's-length transaction and reflects fair market value because there were other interested purchasers. Nuckolls further explained the assets of the 2015 sale were allocated between real estate and business value based on IRS guidelines, the State of Iowa tax code, and Generally Accepted Accounting Practice (GAAP) requirements. We note that the IRS guidelines Nuckolls cites indicate the allocation of an asset cannot exceed fair market value. (Ex.

26). This, however, does not foreclose the allocation of an asset at less than its fair market value and does not mean the allocation itself is consistent with the asset's fair market value. Based on this allocation method, he asserts the combined fair market value of the subject properties is \$90,116. (Appellants' Brief, p. 4).

In support of this conclusion, Nuckolls also considered several other methods of allocation. His conclusions of value using these methods ranged from \$93,000 to \$107,272 for the combined assessment.

In one method, he considers that the 2009 sale allocated \$373,500 to the real property. He adjusts this as a percentage of the 2015 sale to arrive at a combined allocation to the real property of \$99,466 for 2015. (Appellants' Brief, p. 4).

Nuckolls also submitted a replacement cost estimate of the tangible assets of the property and business. (Ex.14). He asserts this analysis demonstrates a real property value of \$107,272 for the subject properties.

He also summarized the revenue breakdown of all income produced by the marina. (Ex. 15). Based on the total revenue sources, he rationalizes that 13.5% of it is reliant on the real property. He applies this percentage to the \$800,000 purchase price to arrive at his conclusion that \$93,000 is the correct assessment for the real property based on revenue, after subtracting value for a third parcel that is not a part of this appeal. (Appellant's Brief, p. 5).

PAAB does not rely on any of the above allocation methods for several reasons. Foremost, allocation is not an appropriate or recognized method of determining the fair market value of real property. Moreover, Nuckolls testified that all of the allocation methods he developed rely on the 2009 sale price and the allocations of that purchase for IRS regulations to determine an assigned value to the real property. However, Nuckolls acknowledged this was a contract sale and not an indication of fair market value. Nevertheless, he has applied the 2009 allocation ratios to the 2015 purchase price of the subject properties. Further, the 2015 sale effectively represents a short-sale transaction prior to the impending default of the 2009 contract.

Nuckolls also submitted two properties he considered comparable to the subject. The first is known as Playtime Storage located at 20793 J5T, Moravia. (Ex. 16).

Nuckolls asserts this property is similar to the subject with comparable improvements and use. However, it is not a lakefront property like the subject nor does it have a hotel. The second property is the Redrock Marina. (Ex. 17). Like the subject, it is a marina on land leased from the Corps.

We do not find it necessary to scrutinize these properties because neither has recently sold. Therefore, a sales comparison analysis with adjustments for differences and a conclusion of market value cannot be developed.

Lastly, the record also includes a business valuation of the subject properties completed by Nils Norland, Norland Appraisal Services, LLC, Ankeny, Iowa. (Ex. 6). The appraisal had an effective date of February 2014. Nuckolls confirmed that Norland's report is a valuation of the business and not the real property. For this reason, we do not find it relevant to this appeal and give it no consideration.

Appanoose County Assessor Michael Barth testified for the Board of Review. Barth explained the Appellants requested a review of the properties prior to the 2015 assessment. Barth inspected the subject property, at which time he was provided with income returns. After analyzing the information, Barth did not believe the income approach was the best valuation method for the subject property. However, after his inspection and subsequent analysis, he reduced the assessments because of the improvements' condition and because they were built below the water level of the marina, which can result in potential flooding to some of the improvements.

Nuckolls is critical of the assessment because the income approach was not relied on in establishing the market value. Barth explained he analyzed and considered the income information he was provided, however, it indicated a negative value for the property and he did not believe it was reliable. We note that an income analysis requires the analysis of market income, not actual income.

Nuckolls was also critical that the actual sale of the subject property on January 1, 2015, was not considered in the assessment process. Barth explained he knew the contract had been "closed" but he was unaware of any document recording the 2015 sale.

The Board of Review also submitted an appraisal of the subject properties completed by Michael Olson, The Olson Group, Urbandale, Iowa. (Ex. F). The appraisal had an effective date of January 1, 2015, and determined a market value opinion of \$50,000 for Boat Works and \$305,000 for Rathbun.

Olson explained the limitations of the income and sales comparison approaches to value, citing limited reliability of the actual income, a lack of sales, and the existence of non-typical conditions affecting the sales prices. (Ex. F, pp. 3-5). He relied exclusively on the cost approach for his conclusions. We do not find it necessary to recite Olson's analysis, but note it is the only credible evidence of a market value opinion in the record.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

The Appellants assert the subject parcels are overassessed and their combined fair market value is roughly \$100,000. They arrive at this value opinion by considering the allocation of assets determined as part of the 2015 sale of the properties and through other valuation techniques. In addition, the Appellants argue the Board of

Review erred in not considering the income approach to value in setting the assessment.

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value under Iowa law. § 441.21(1)(b). However, “[s]ales prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including . . . foreclosure or other forced sales.” *Id.* Where the parties convince PAAB that comparable sales do not exist or cannot *readily* determine market value, then other factors such as cost and income can be used. *Id.* at 398 (emphasis added) (citing *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 782 (Iowa 2009)); *Carlton Co. v. Bd. of Review of City of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997); § 441.21(2).

The Appellants purchased the subject properties in January 2015 for \$800,000. We find this sale was not a normal, arm's length transaction and give it no consideration. First, the sale was effectively a short-sale transaction prior to the impending default of the 2009 contract. Second, the sales transaction included the transfer of business assets. Lastly, the sale also included assignment of the long-term lease of buildings on leased land. (Exs. 3, 4). Given these circumstances, we question whether the sale represents the fair market value of the assessable real property. *Soifer*, 759 N.W.2d at 783 (citing *Crozier v. Iowa-III. Gas & Elec. Co.*, 165 N.W.2d 833, 834 (Iowa 1969)) (noting that the nature and timing of a sale bears on the competency of the sales evidence).

In addition, we find the Appellants allocation of value based on the 2015 sale does not represent the fair market value of the assessable real estate assets consistent with Iowa assessment law. The plain language of the IRS guidelines the Appellants rely upon do not suggest the allocation necessarily equates to the real estate's fair market

value. Exhibit 10 appears to indicate the allocation does not, in fact, represent the fair market value of the buildings. The fair market value expressed on Exhibit 10 (\$200,000) is consistent with the properties' current assessment. Lastly, if we presume the 2009 and 2015 allocations to be accurate reflections of market value, then they indicate the buildings depreciated by nearly 70% over that period, which appears facially unreasonable.

The comparable properties the Appellants submitted did not recently sell and do not demonstrate the properties are assessed for more than their market value. Even assuming the sales comparison approach cannot readily establish the properties' fair market value, the Appellants have not offered any other valuation approach which we find reliably reflects the properties' fair market value.

The Appellants assert the replacement cost of the building is \$107,272. (Ex. 14). This value opinion is based on an estimate of contractor expenses and insurance company inspection. (Ex. 14). These supporting documents were not submitted as evidence in this appeal; and therefore, we are unable to determine whether the methodology used is consistent with Iowa Code section 441.21. As a result, we give this evidence no consideration.

In support of their claim, the Appellants contend that the income derived from the real estate indicates its market value is \$93,000. (Appellants' Brief p. 5). This value was arrived at by multiplying the percentage of revenue derived from the real estate (13.5%) as determined by Appellants times the 2015 sale price (\$800,000). This is atypical methodology for completing the income approach to value. Further, because this valuation was ultimately arrived at by use of the abnormal 2015 sale, we give this value opinion no consideration.

The Appellants also submitted income approaches to value based on 2011-2014 income/expense information. (Ex. 21). It is ultimately unclear to this Board how the figures used in the income approach were derived or how the selected capitalization rates were determined. It would seem the gross income is a derivative of the property's actual income. Case law examining income approaches to value has consistently noted that market income, not actual income, is to be used. *Soifer*, 759 N.W.2d at 789 (citing

Merle Hay Mall v. City of Des Moines Bd. of Review, 564 N.W.2d 419 (Iowa 1997)).

Further, it is unclear if the income figures include income derived from slip rentals and other service-derived income. For these reasons, we cannot rely on the value conclusion.

In addition, the Appellants complain that the Assessor did not give sufficient consideration to the income approach to value in assessing the properties. Although the Appellants allude to resources discussing the valuation of marinas, we acknowledge the difficulty in completing the income approach to value on the subject parcels. It is clear the buildings are, at least in part, necessary to the operation of the properties' marina business, but are not the properties' primary income-generating assets. The Appellants admit the majority of revenue comes from services performed on the property and this presents a challenge for accurate valuation. See THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 478 (14 ed. 2013) (noting that service-derived income may or may not be attributable to real property and an appraiser may exclude the income from the property's gross income in the income approach to value). The Board of Review's appraiser, Michael Olson, identified this difficulty. (Ex. 21, p. 4). This fact, along with Iowa Code section 441.21(2)'s prohibition against including business value in the assessment, makes valuing the subject properties by the income approach uniquely complicated. Ultimately, we need not decide whether the income approach to value can reliably be used to value the subject because the Appellants have not offered any credible evidence of the properties' value that complies with Iowa assessment law.

The Appellants make a number of other statements contesting the current assessment and the actions of the Assessor over the last several years. (Appellants' Brief pp. 14-17). The Appellants' concerns about the Assessor and hired counsel are outside the scope of this Board's jurisdiction. As it relates to Appellants' other statements regarding the Assessor's cost approach and issues affecting the properties, we have no reason to question the validity of the Appellants' assertions. As previously described, however, the Appellants have not put forth reliable evidence of the properties' fair market value that is consistent with Iowa assessment law. Ultimately there is no evidence demonstrating the effect of these issues on the properties' value.

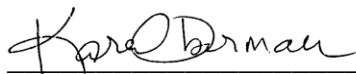
Based on the foregoing, we find the Appellants have not met their burden of establishing the property is overassessed by a preponderance of the evidence.

Order

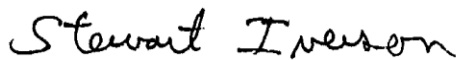
IT IS THEREFORE ORDERED that the Appanoose County Board of Review's actions are affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Dated this 14th day of March, 2016.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Copies to:

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